IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.536 OF 1989

The State of Maharashtra ...Appellant

vs.

Kisan @ Krishna Dagadu Jadhav ...Respondent

Shri D.S.Mhaispurkar, A.P.P. for State
Shri Umesh Mankapure for Shri R.V.More for the Respondent.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : DECEMBER 1, 2004.

ORAL JUDGMENT : **(Per Abhay S. Oka,J.)**

1. By this appeal against acquittal under Section 378 (1) of Code of Criminal Procedure,1973, the Appellant-State of Maharashtra has taken exception to the Judgment and Order dated 29th March 1989 passed by the learned Assistant Sessions Judge, Sangli in Sessions Case No.141 of 1987. By the impugned Judgment and order, the learned Assistant Sessions Judge acquitted the Respondent-accused of the offences punishable under Sections 307, 324 and 323 of Indian Penal Code (for short "I.P.C.")

2. The prosecution arises out of a dispute between husband and wife. The complainant Rekha (P.W.6) is the wife of the accused. The complainant had filed an application for maintenance against the respondent-accused under Section 125

of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code). The said application was pending in the Court of Judicial Magistrate First Class, Miraj. It appears that at the relevant time relations between the complainant and the accused were strained. On 15th October 1987 the said application was fixed for hearing before the learned Judicial Magistrate, Miraj. The complainant was present in the court along with her minor daughter by name Smita. At about 3.30 p.m. the accused who was present in the court stabbed complainant-Rekha with a knife. The accused also caused injury to Smita the minor daughter of the complainant. The Police Constable on duty in Miraj court caught accused and was taken to Miraj Police Station. The complainant sustained serious injuries. A Charge sheet was filed against the respondent-accused under Sections 307, 324 and 323 of I.P.C. and the case was committed to the Court of Sessions, Sangli. A Charge was framed against the accused under Sections 307, 324 and 323 of I.P.C.

3. The prosecution examined 12 witnesses. P.W.1-Mahamad Allabaksha Shaikh is a Panch witness in whose presence the Police attached the clothes on the person of the accused and other articles possessed by the accused under a Panchnama. P.W.No.2 Dhananjay Mahadev Avande is a Police Constable who was at the relevant time attached to Miraj rural police station. On the date of incident he was on duty in the office of Police Prosecutor in the Miraj Court. He caught the

accused in the court premises. P.W.No.3-Krishna Lingappa Satpute is a Panch Witness in whose presence the knife used by the accused was attached. The said witness turned hostile. P.W.No.4-Arvind Dnyaneshwar Gumaste was working as a Clerk at the relevant time in the Court at Miraj. He has deposed before the Court about the incident. P.W.No.5-Khutabuddin Babalal Jamadar is also a Clerk who was working at the relevant time in Miraj Court. He has also described the incident which took place in the court premises. P.W.No.6-Rekha is the complainant who turned hostile. P.W.No.7 Babasaheb Kallapa Mane is a Panch Witness to the Panchnama of attachment of knife used in the offence. The said witness also turned hostile. P.W.No.8 Subhash Shambhudayal Sharma is also a Panch Witness in whose presence the police attached a knife. P.W.No.9 A.M.Khanuja is a shopkeeper from whose shop the knife was purchased by the accused. P.W.No.10 Amrut Rama Mane is a Police Sub Inspector who was at the relevant time attached to Miraj City Police Station. He is the Investigating Officer. P.W.No.11 Dr.Padmini Annasahab Rajmane is the Medical Officer who examined the complainant and her daughter. P.W.No.12 Shripad Malgonda Patil was the Station Officer at the relevant time in Miraj Police Station. The learned Assistant Sessions Judge held that the prosecution has failed to prove its case and therefore proceeded to acquit the accused.

4. The learned A.P.P. Shri Mhaispurkar submitted that though

the complainant Rekha may have turned hostile, the evidence of other witnesses and especially P.W.Nos.2,4 and 5 proves the guilt of the accused beyond reasonable doubt. He submitted that the crime was committed by the accused in the court premises at Miraj. He submitted that it was a heinous crime. He submitted that merely because the complainant had turned hostile the accused cannot be acquitted on that ground especially when other witnesses have deposed before the Court and their evidence established the case of the prosecution beyond reasonable doubt. He submitted that the Medical evidence also supports the case of the prosecution.

5. On the other hand the learned Counsel for the Respondent submitted that none of the witnesses who are examined by the prosecution have stated to have seen the accused stabbing his wife or daughter and therefore, the learned Assistant Sessions Judge was justified in acquitting the accused. He stated that the accused and his wife were present in this Court today and after the incident, they started residing together as husband and wife and till today they are happily residing together. He submitted that no interference is called for in an Appeal against acquittal.

6. P.W.No.2 Dhananjay Mahadev Avande, a Police Constable has stated that he was on duty in the office of Police Prosecutor in Miraj Court. At about 3.30 p.m. on 15th October 1987 he heard shouts of one lady "melo-melo". After hearing the noise

he came out of his room when he found that the accused was moving with a knife in the gallery of the court building. He immediately rushed there. He saw one lady i.e. the complainant sitting in the court hall on a bench. He stated that the knife in the hand of the accused was having blood stains. The accused was threatening the lady to kill her. He stated that the saree on the person of the complainant was removed and same was lying in the gallery. He went near the accused from backside and caught his right hand which was holding the knife. The accused was carrying chilly powder in his pocket. The accused took out said chilly powder and threw it on the face of the said witness. The chilly powder entered in the eyes of the witness. However, he continued to hold the right hand of the accused by his both hands. Meanwhile, armed Constables Zambare and Kamble came there. Police Head Constable Mulla also came there and all of them caught hold of the accused. The accused dropped knife in his hand only after an armed Constable pointed rifle towards the chest of the accused. Thereafter, accused was taken to the Police Prosecutor's Office and the said witness took the knife which was held by the accused. He stated that thereafter the Police Head Constables Zambre and Kamble took the accused to the police station. He noticed that the complainant had injuries on her stomach and thighs and the child had sustained injury on left leg. He also stated that the knife was attached under a Panchnama. He also identified the clothes which were worn by the accused at the relevant time. P.W.No.2 was extensively

cross examined by the Counsel for the accused. Certain contradictions were brought on record in the cross examination. It is pertinent to note here that P.W.No.2 is not an eye witness to the incident of assault and stabbing.

7. P.W.No.4 Arvind Dnyaneshwar Gumaste was working in the Miraj Court at the relevant time. He deposed that he was the Bench Clerk of the concerned Court on the date of incident. He stated that the accused and the complainant were present in the Court in connection with the maintenance application filed by the complainant. Till 2.30 p.m. on that day, the case of the complainant was not called out and next date was not given. In lunch recess he was sitting in the Nazir's office. When he was sitting there he heard shouts of a lady. From Nazir's office he came in the gallery of the Court premises. When he saw a lady along with a kid running from gallery to the court hall. The accused had caught hold of the saree of the said lady and the accused was also holding one knife in his hand. The said knife was having blood stains. He stated that the said saree was removed from the body of the complainant by the accused and it was lying in the gallery. He stated that the lady went inside the court hall. He deposed that one Shri Avande caught hold of the hand of the accused in which he was holding knife. The accused took out chilly powder and threw it on the face of the Constable. He stated that he caught hold of the left hand of the accused and encircled the accused with his hands. He also described the

manner in which the Constable Avande removed the knife from the hand of the accused. He identified the accused, the complainant and her daughter in the court. This witness has also not seen the actual crime being committed. The said witness was also extensively cross examined by the Counsel for the accused.

8. P.W.No.5 Khutabuddin Babalal Jamadar is not an eye witness to the incident. When he reached the gallery of the court premises the incident of stabbing had already taken place. P.W.No.5 was also working in the court at the relevant time. He deposed that when he was in the Chamber he heard the noise of one lady and a small child. He therefore come to the Court Hall. He saw a lady entering the court hall. He stated that saree on the person of the lady was removed and she had sustained bleeding injuries. He saw the accused standing in the gallery holding a knife. He stated that he himself and one Advocate Chandekar closed the door of the court hall as they apprehended that the accused may enter the court hall. He identified the accused, complainant and the small child in the court. It is clear from the evidence of P.W.No.5 that he has not seen the actual incident of stabbing or assault.

9. P.W.No.6 Rekha-complainant stated that her marriage with the accused took place about two and half years ago. She deposed that there was no litigation pending between herself and the accused and the maintenance proceeding in the Miraj

Court was filed by her parents. She stated that there was no incident of stabbing by her husband in the Miraj Court. The complainant-P.W.No.6 was declared hostile and was cross examined by the Public Prosecutor.

10. P.W.No.11 Dr.Padmini Rajmane had examined the complainant and her daughter on the date of incident. She stated that the complainant suffered following injuries on her person :

a) Incised wound over Rt. side of chest in Rt. Hypochondriac region 3 x 1 1/2 cms bleeding present.

b) Incised wound on Rt. gluteal region one cms.deep, bleed present 3 x 1 cms.

She stated that the injuries sustained by the complainant can be caused by a sharp object like knife. She stated that the daughter of the complainant had one incised wound on left leg admeasuring 5 x 2 cms and 1 cm deep. She also deposed that the said injury can be caused by a sharp object.

11. No other witness is relevant in so far as the incident of assault is concerned. P.W.Nos.2, 4 and 5 who were present in the Court at the time of incident have not seen the actual assault or act of stabbing by the accused. Their evidence at highest will prove that there was a scuffle between the husband and wife. The complainant herself has not supported

the prosecution. We are dealing with an Appeal against acquittal. The findings which are recorded by the learned Assistant Sessions Judge are based on evidence on record. In view of the fact that the complainant herself has turned hostile, we are of the view that no other view was possible to be taken by the learned Judge on the basis of the evidence on record. We may note here that both the complainant and the accused were present in this Court at the time of hearing of the Appeal. The complainant stated before us that after the decision of the Sessions Court she has been happily residing with the accused till today and the accused has been treating her well all through out. The accused stated that he will continue to look after his wife very well in future also.

12. There is no merit in the Appeal and the same is dismissed.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)